



DEPARTMENT OF THE NAVY
NAVY RECRUITING COMMAND
5722 INTEGRITY DR.
MILLINGTON, TN 38054-5057

COMNAVCRUITCOMINST 5800.3H
00J
24 Aug 2009

COMNAVCRUITCOM INSTRUCTION 5800.3H

From: Commander, Navy Recruiting Command

Subj: DISCIPLINARY PROCEDURES FOR NAVY RECRUITING COMMAND

Ref: (a) Manual of the Judge Advocate General (JAGMAN)
(b) Manual for Courts-Martial, United States
(2008 Edition)

Encl: (1) Instructions for Preliminary Inquiry Officers
(2) Checklist for Investigating Officers
(3) Sample Appeal Letter
(4) Sample First Endorsement of Appeal Letter
(5) Sample Optional Second Endorsement on Appeal Letter
(6) Supervisor's Statement Format
(7) Witness Statement Format
(8) Accused Statement Format

1. Purpose. To update uniform procedures for action on civilian and military offenses punishable under the Uniform Code of Military Justice (UCMJ) by Nonjudicial Punishment (NJP) and courts-martial for members of Navy Recruiting Command.

2. Cancellation. COMNAVCRUITCOMINST 5800.3G. All revisions have been identified by an (R in the right hand column).

3. Civilian Offenses. When military and civilian charges arise from the same incident, disciplinary action may not be taken against members who have been tried by civilian authorities without proper authorization per section 0124 of reference (a).

4. Courts-Martial. Commanders of Navy Recruiting Regions (NAVCRUITREGs) and Commanding Officers of Navy Recruiting Districts (NAVCRUITDISTs) are authorized to convene Special Courts-Martial (SPCMs) and Summary Courts-Martial (SCMs). Commander, Navy Recruiting Command and the Commanders of Navy Regions are the usual convening authorities for General Courts-Martial (GCMs).

(R

5. Courts-Martial

a. Upon completion of every trial by courts-martial, a written record is prepared for the convening authority. In a

GCM or a SPCM case involving a Bad Conduct Discharge (BCD), the Staff Judge Advocate (SJA) or Legal Officer (LO) must review the record and make recommendations regarding the adjudged sentence. Once the SJA provides his/her input, the convening authority determines whether to approve or disapprove the sentence. In a SCM or SPCM not involving a BCD, the JAG review will not occur until after the convening authority has approved or disapproved the adjudged sentence.

b. NAVCRUITCOM 00J should be advised by phone when a convening authority is considering convening a courts-martial and briefed as necessary during the proceedings.

6. Non-Judicial Punishment (NJP)

a. A preliminary inquiry should be initiated when there is knowledge that an offense has been committed. It is not necessary to file a formal NAVPERS 1626/7 (Rev 12-88) Report and Disposition of Offense(s) (Report Chit). At the discretion of the CO, an Alleged Enlistment Processing Irregularity (AEPI) investigation or a JAGMAN investigation may be used in lieu of a preliminary inquiry. Enclosure (1) provides guidance for Preliminary Investigating Officers (PIOs). Enclosure (2) is a checklist for Investigating Officers (IOs).

b. NJP shall be administered per Chapter 1 of reference (a) and Part V of reference (b). Appendix A-1-m (Suspect's Rights Acknowledgement/Statement) of reference (a) will be used when advising the accused of his/her rights prior to questioning. Appendix A-1-d (Accused's Notification and Election of Rights) of reference (a) will be used when advising the accused of the right to consult with an attorney in deciding whether or not to accept NJP.

c. The Report Chit shall clearly reflect the results of NJP. Disposition of each specification shall be noted (i.e., guilty, not guilty, or dismissed).

Forfeitures shall be noted as whole dollar amounts only. If a reduction in rate is imposed, the maximum forfeiture is based on the reduced pay grade, whether or not the reduction is suspended.

The record should clearly indicate whether all or a specific portion of the punishment is suspended. Administrative separation processing, decertification boards, and fault transfers are not punishments at NJP, and should not be listed as such on the Report Chit.

d. Appeals of NJP using enclosures (3) through (5) shall be forwarded to NAVCRUITCOM 00J, via the Region Commander.

(R)

7. NAVCRUITREGs and NAVCRUITDISTs will report the number of NJPs, and federal and state convictions to NAVCRUITCOM 00J by the 10th of the month after the end of a quarter (e.g., 10 January for the quarter October through December). These inputs will be compiled into the Quarterly Criminal Activity Report submitted to the Office of the Judge Advocate General by COMNAVCRUITCOM as the Officer Exercising General Courts-Martial Jurisdiction.

8. Forms and Reports

a. NAVPERS 1626/7 is available electronically at:
<http://www.npc.navy.mil/NR/rdonlyres/3F1A66F4-5D15-4B89-8360-ECE760D440BA/0/NAVPERS16267.pdf>.

(R

b. Report Control Symbol JAG 5800-4A has been assigned to the report contained in paragraph 7.

/s/
R. R. BRAUN

Distribution:
<http://www.cnrc.navy.mil/Publications/directives.htm>

**Instructions For
Preliminary Inquiry Officers**

1. Objectives

a. The primary objective of the PIO is to collect all available evidence pertaining to the alleged offense(s). As a first step, the PIO will become familiar with those paragraphs of reference (b) describing the offense(s). Each of the punitive offenses, Articles 77 through 134, are described in Part IV of reference (b). Within each paragraph is a section entitled "**Elements**" which lists the elements of proof necessary for that offense. The PIO must be careful to focus on the correct variation. The elements of proof should be copied down to guide the PIO in searching for relevant evidence. The PIO is looking for anything which tends to prove or disprove an element. Note the two-sidedness of the function--the PIO is impartial.

b. The secondary objective of the PIO is to collect information about the accused which will aid the CO in making a proper disposition of the case and, in the event NJP is to be imposed, what the appropriate punishment, if any, should be. Items of interest to the CO include: the accused's currently assigned duties; evaluation of performance; attitude and ability to work and associate with others; and particular personal difficulties or hardships which the accused is willing to discuss. This information may be recorded on enclosure (6).

2. Interrogate the Witnesses First (Not the Accused)

a. In most cases, a significant amount of information must be obtained from witnesses, including the alleged victim(s). The person/report initiating the Report Chit and the persons listed as witnesses are starting points. Other persons having relevant information may be discovered during the course of the investigation.

b. Witnesses who have relevant information to offer should be requested to make a sworn statement. When a witness is interviewed by telephone and is unavailable to execute a sworn statement, the PIO must summarize the interview and certify it to be true.

c. When interviewing a witness, the PIO should seek to elicit all relevant information. Ask the witness to relate everything known about the subject of inquiry, and then follow-up with specific questions. After conversing with the witness, the PIO should assist in drafting a statement that is thorough, relevant, orderly, and clear. The substance must always be the actual thoughts, knowledge, or beliefs of the witness. The

assistance of the PIO is limited to helping the witness express himself/herself accurately and effectively in written form. A sample witness statement format is included as enclosure (7).

3. Collect the Documentary Evidence. Obtain documentary evidence such as security or police reports, log entries, watchbills, service record entries, local instructions or organization manuals. Attach the original or a certified copy of relevant documents to the report. As an appointed investigator, the PIO has the authority to certify copies to be true by subscribing the words "CERTIFIED TO BE A TRUE COPY" with signature.

4. Collect the Real Evidence. Real evidence is a physical object, such as the knife in an assault case, or the stolen camera in a theft case. Before seeking out real evidence, if any, the PIO must become completely familiar with the Military Rules of Evidence (reference (b), Rules 311 through 316), concerning searches and seizures. If the item is too large to bring to an NJP hearing or into a courtroom (for instance, the wrecked government vehicle in a "damaging government property" case), a photograph of the item should suffice. Real evidence already in the custody of a law enforcement agency should be left there unless otherwise directed. The PIO should inspect it personally.

5. Advise the Accused of His/Her Rights

a. Before speaking with the accused, the PIO should be thoroughly prepared. Even if the accused confesses guilt, the PIO should still collect independent evidence to corroborate the confession.

b. Before questioning the accused, the PIO should have the accused sign the acknowledgement line on the front of the Report Chit and initial any additional pages of charges that may be attached. Signing the Report Chit only acknowledges that the member has been placed on report. It is not an admission of guilt. The PIO should sign the witness line on the front of the Report Chit next to the accused's acknowledging signature.

c. The PIO shall ensure that the accused is given his/her Article 31(b) rights. Suspect's Rights Acknowledgement/Statement (Appendix A-1-m of reference (a)) is used to administer these rights and must be signed prior to questioning the accused. File this document with the other case documents. Only one witness is necessary and that witness may be the PIO.

6. Interrogate the Accused

a. The accused may be questioned only after knowingly and intelligently waiving all constitutional and statutory rights. Such waiver, if made, should be recorded on Appendix A-1-m of reference (a). If the accused asks whether or not to waive his/her rights, the PIO must decline to answer or give any advice on that question. Leave the decision to the accused. Other than advising the accused of his/her rights as stated in paragraph 5c above, the PIO should never give any other form of legal advice to the accused. If the accused desires to consult with an attorney, military attorneys are available to give legal advice.

b. If the accused has waived all rights, the PIO may then begin questioning. If the accused is inclined to lie or distort, allow him/her to do so at this point. The PIO may probe with pointed questions and confront the accused with inconsistencies in his/her story or contradictions with other evidence. The PIO should keep in mind that if a confession is not voluntary it cannot be used as evidence. A confession or admission obtained through the use of coercion, unlawful influence, or unlawful inducement is not voluntary.

c. Some instances of coercion, unlawful influence, and unlawful inducement in obtaining a confession or admission are: infliction of bodily harm (including questioning accompanied by deprivation of the necessities of life, such as food, sleep, or adequate clothing); threats of bodily harm; imposition or threats of confinement; deprivation of privileges or necessities; promises of immunity or clemency as to any offense allegedly committed by the accused; and promises of reward or benefit, or threats of disadvantage, likely to induce the accused to make the confession or admission.

d. If the accused is willing to make a written statement, make sure the accused has acknowledged and waived all rights. A sample format is included as enclosure (8). While the PIO may help the accused draft the statement, the PIO must refrain from putting words in the accused's mouth or tricking the accused into saying something that he/she did not intend to say. If the draft is typed, the accused should read it carefully and be permitted to make any changes he/she wishes. All changes should be initialed by the accused and witnessed by the PIO.

e. Statements, even if not made in writing, are admissible against an accused. If the accused does not wish to make a written statement, the PIO must attach a certified summary of the interrogation to the investigative report. When the accused

has made a written statement, but omitted facts revealed during interrogation, the PIO must add a certified summary of matters omitted from the accused's written statement.

7. Concluding the Investigation

a. Conduct follow-up interviews with witnesses and the alleged victim(s) if necessary to clarify, to the extent possible, disputed issues. After all pertinent information has been gathered, render findings of fact as supported by interviews and/or other forms of evidence.

b. Re-evaluate potential UCMJ violations:

(1) Is there proof for each element of the offense believed to have been committed?

(2) Are there other offenses that can be proven by the evidence?

c. Render opinions based on findings of fact:

(1) Is there a preponderance of evidence that each offense alleged has been committed?

(2) Should charges of committing the alleged offense(s) be pursued either through NJP or courts-martial? (Remember the standard of proof at a courts-martial is proof beyond a reasonable doubt.)

d. Make recommendations as to the disposition of offenses based on opinions.

Checklist For Investigating Officers

INVESTIGATOR'S REPORT IN THE CASE OF _____

1. Read paragraphs in MCM concerning offenses/charges: Y N

2. Witnesses interviewed:

| NAME | PHONE | STATEMENT ATTACHED | SUMMARY ATTACHED |
|----------|-------|-----------------------|---------------------|
| a. _____ | | Y N | Y N |
| b. _____ | | Y N | Y N |
| c. _____ | | Y N | Y N |
| d. _____ | | Y N | Y N |
| e. _____ | | Y N | Y N |
| f. _____ | | Y N | Y N |

3. Supervisor(s) interviewed:

| | | |
|----------|-----|-----|
| a. _____ | Y N | Y N |
| b. _____ | Y N | Y N |
| c. _____ | Y N | Y N |

4. Documentary evidence: Orig or Location of Orig

| | | |
|----------|-----|-------|
| a. _____ | Y N | _____ |
| b. _____ | Y N | _____ |
| c. _____ | Y N | _____ |

5. Real evidence:

Description

Name and Phone of Custodian

| | |
|----------|-------|
| a. _____ | _____ |
| b. _____ | _____ |

6. Accused reviewed and acknowledged Report Chit: Y N

7. Accused initialed second page of charges, if any: Y N

8. Investigator witnessed accused's acknowledgement on Report Chit: Y N

9. Accused acknowledged Suspect's Rights Acknowledgement/Statement: Y N

10. Accused's statement, if any, attached to Suspect's Rights Acknowledgement Statement: Y N

Sample Appeal Letter

Date

From: (P02 I. M. Somebody, USN, XXX-XX-6789)
To: Commander, Navy Recruiting Command
Via: Commanding Officer, Navy Recruiting District, _____

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Ref: (a) UCMJ, Art. 15
(b) MCM, 2008 Part V, Para 7
(c) JAGMAN 0116

Encl: (1) (Any documentation supporting appeal)

1. As provided by references (a) through (c), I am appealing the nonjudicial punishment imposed by Commanding Officer, Navy Recruiting District, _____, on (date) on the basis that it was (unjust or disproportionate to the offense or both). Enclosure (1) contains additional documentation for your consideration.

2. I was found guilty of the following:
UCMJ, Art(s) ____, (summarized specification).

3. The following punishment was awarded:
(Punishment awarded)

4. I respectfully request relief for the following reasons:

Very respectfully,

I. M. SOMEBODY

Enclosure (3)

Sample First Endorsement to Appeal Letter

5812
Ser/

FIRST ENDORSEMENT on PO2 I. M. Somebody, USN, ltr of (date)

From: Commanding Officer, Navy Recruiting District, _____
To: Commander, Navy Recruiting Command

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Encl: (2) (Copy of NJP package)

1. Forwarded, recommending disapproval.
2. Petty Officer Somebody was found guilty of violation of the UCMJ, Article(s) _____ and was awarded (list punishment awarded).
3. Petty Officer Somebody was advised and understood his/her rights at the nonjudicial punishment hearing. He/she offered (list evidence offered, if any) which was taken into consideration prior to making a finding. Based on a preponderance of the evidence, he/she was found guilty.

CO'S SIGNATURE OR ACTING

Copy to:
PO2 Somebody
NAVCRUITREG _____

Enclosure (4)

Sample Optional Second Endorsement to Appeal Letter

5812
Ser/

SECOND ENDORSEMENT on PO2 I. M. Somebody, USN, ltr of (date)

From: Commander, Navy Recruiting Region _____

To: Commander, Navy Recruiting Command

Subj: APPEAL OF NON-JUDICIAL PUNISHMENT

1. Forwarded, concurring with Commanding Officer, Navy
Recruiting District, _____

2. Any amplifying information.

COMMANDER'S SIGNATURE OR ACTING

Copy to:

PO2 Somebody

CO, NAVCRUITDIST ____

Supervisor's Statement Format

Case of _____
Name/Rank/SSN

Report Chit dated: _____ UCMJ Article(s): _____

Remarks of LPO/LCPO concerning Charge(s) and Performance:

Signature/Rank/Phone Number

Remarks of Division Officer concerning Charge(s) and Performance:

Signature/Rank/Phone Number

Remarks of Department Head:

Signature/Rank/Phone Number

Department Head Recommendation as to disposition:

- ___ Handle at Departmental level
- ___ Counseling
 - ___ EMI
 - ___ Dispose of Case at Mast
 - ___ Dismissal
 - ___ Punishment
 - ___ Forfeiture
 - ___ Restriction for ___ days
 - ___ Extra Duty for ___ days
 - ___ Reduction in Rate (only one pay grade)
 - ___ Refer to Court-Martial

___ Other: _____

Signature/Rank/Phone Number

Witness Statement Format

Name Occupation

Work Address

City State Zip Code

Work Phone

I, _____, hereby make the following statement to
_____, who has identified
himself/herself as a Preliminary Inquiry Officer for the
Commander/Commanding Officer, _____.

(use additional pages if necessary)

I swear (or affirm) that the information in the statement above and on
the _____ attached page(s) is true to my knowledge or belief.

Witness Signature Date Time

Sworn to before me this date.

Accused Statement Format

Name Occupation

Work Address

City State Zip Code

Work Phone

I, _____, hereby make the following statement to
_____, who has identified
himself/herself as a Preliminary Inquiry Officer for the
Commander/Commanding Officer, _____.

(use additional pages if necessary)

I swear (or affirm) that the information in the statement above and on
the _____ attached page(s) is true to my knowledge or belief.

Signature Date Time

Sworn to before this date.
